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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,388	02/10/2004	Matthew M. Morrison	4002-3479	9912

7590

11/16/2005

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EXAMINER

AMARELD JR, ROBERT W

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

E

Office Action Summary

Application No.

10/775,388

Applicant(s)

MORRISON ET AL.

Examiner

Robert W. Amareld, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, **the TOOL of claim 28** must be shown must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract **not exceed 150 words** in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because of undue length. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 16-21, 30, 32 & 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Yuan (US Pat #5616142). Yuan discloses a plate member (10) with two L-shaped lower grooves (11), each having a flange portion extending substantially

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parallel and connected to the upper portion, which has a substantially flat upper surface and at least one hole (12), the flanges extending toward each other and being substantially along the entire length of the plate. The lower portion being adjacent the side edge of the upper portion and being substantially smooth as shown in the profile of figure 4c. The hole (12, 22) having an axis and at least one tapered section, all circular openings being inherently tapered at each edge, additionally the threaded portion providing additional tapered sections. With respect to claim 30, embodiment 20' in Figure 2 shows two bumps or fingers adjacent holes 22, diametrically opposed, extending away from the axis of the holes, all embodiments of Figure 2, being convex on the lower surface.

Claims 30-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Sammarco (US Pat# 57187105). Sammarco discloses a substantially smooth body (as shown in Figure 1, with a hole (15), having a tapered section, all circular openings being inherently tapered at each edge, and 8 fingers (3-10) extending away from the axis of the hole, and two of which are diametrically opposed. The 8 fingers forming a body of octagonal shape, which is capable of being bent and shaped (column 2, lines 5-9), including being shaped into a convex surface.

Claims 30, 32, 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Dzus (Pat#2511051). Dzus discloses a body with a substantially smooth upper surface (Figure 8) with a hole having an axis and at least one tapered section, all circular openings being inherently tapered at each edge, additionally this opening being further

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tapered by having a recessed hole. The body also has two diametrically opposed fingers (31) and demonstrates a convex lower surface.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yuan (US Pat# 5616142) in view of Dall (IPN# WO9801079, IAN#PCT/GB97/01785). The majority of Yuan is explained supra, but for the purposes of this rejection Yuan further discloses a plurality of threaded fastening elements (30, column 1, lines 46-49) and a plurality of plate members (figure 2 & column 2, lines 19-22), at least two having different lengths (10' & 20') and a first plate member (10') being substantially straight while a second plate member (20') is not straight as demonstrated by the bump located near hole 22. Yuan also discloses the use of a tool (column 4, lines 12-15) compatible with one of the plate, fastener or nut. However Yuan fails to disclose washers and nuts. Dall discloses a cortical bone fastener with washers (16), nuts (14), and a tool (figure 2b) for securing a plate to bone (claim 15). Dall teaches a variety/ plurality (page 1, lines 4-5) of threaded fasteners (figure 1) with washers (16) being adjacent to the upper surface of the plate member (figure 3) that fit around a fastener adjacently to a nut, and

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nuts having a portion that extends into the aperture (13) of the plate (11) or washer (16) (page 2- lines 33-37, page 3- lines 1-4) where the nut is usable with a fastener to lock the fastener to the plate (page 1, lines 27-30 & page 3- lines 1-4). One embodiment of Dall's nut shows the washer (16) in combination with the nut and nut housing (figure 5), where the two are rotatable and translatable with respect to each other. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the bone plate fasteners, as taught by Dall with the bone plate of Yuan such that it provides the ability to lock the fasteners to the plate and attach the plate to necessary bony structures.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lahille (US Pat# 5380325)- a spinal device; Steffee (US Pat# 4854311)- a bone screw; Oxland (US Pat# 567666)- a spine stabilizer; Pepper (US Pat# 5989255).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert W. Amareld, Jr. whose telephone number is 571-272-6170. The examiner can normally be reached on M-F 9am -5pm EST.

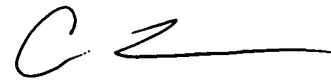
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M. McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert W Amareld, Jr.
Examiner
Art Unit 3738

RWA



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SUPERVISORY PATENT EXAMINER
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